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7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 DESERAE RYAN, and TRENT RAU,)
individually and on behalf of all others) CASE NO.:
12 similarly situated;)
13 Plaintiffs) **ANTITRUST CLASS ACTION**
vs.) **COMPLAINT**
14)
15 MICROSOFT CORPORATION, a Washington) DEMAND FOR JURY TRIAL
corporation;)
16)
17 Defendants.)
_____)

1 Plaintiff Deserae Ryan (“Ryan”), and plaintiff Trent Rau (“Rau”), individually and on
 2 behalf of all others similarly situated, (collectively, “Plaintiffs”) allege the following:

3 **I. INTRODUCTION**

4 1. This class action is brought by Plaintiffs, on behalf of themselves, and on behalf
 5 of all others similarly situated, who have sustained injuries or incurred damages arising from
 6 Defendant’s (defined below) violations of the antitrust and unfair competition laws of the
 7 United States and the State of California.

8 2. This class action challenges a conspiracy by Defendant by way of Anti-
 9 Solicitation Agreements and Restricted Hiring Agreements (both defined below) to fix and
 10 suppress the compensation of its greatest assets—its employees.

11 3. Without the knowledge or consent of their employees, senior executives from
 12 Microsoft Corporation (“Microsoft” or “Defendant”) and numerous other companies in the
 13 high-technology industry entered into express anti-solicitation agreements with one another,
 14 including Microsoft. Collectively, these agreements shall be known as the “Anti-Solicitation
 15 Agreements.”

16 4. The Anti-Solicitation Agreements, in short, precluded technology companies
 17 from “cold calling” (i.e. trying to recruit) each other’s employees.

18 5. The Anti-Solicitation Agreements effectively stifled competition for skilled
 19 employees in the technology field.

20 6. Further, without the knowledge or consent of their employees, senior executives
 21 from Microsoft entered into an agreement with Google not to pursue manager level and above
 22 candidates from one another for “Product, Sales, or G&A [General & Administrative]”
 23 positions. The aforementioned agreement shall be known as the “Restricted Hiring
 24 Agreement.”

25 7. The Restricted Hiring Agreement effectively stifled competition for skilled managerial
 26 labor. Collectively, the Anti-Solicitation and the Restricted Hiring Agreement shall be known
 27 as the “Unlawful Agreements.”

28 8. The Unlawful Agreements that involved Microsoft were not publicly disclosed

1 until May 17, 2013. Before that time, the identities of the companies who were parties to the
 2 Unlawful Agreements were unknown to Plaintiffs and unknown to the public. Not until that
 3 time did Plaintiffs have the ability to become aware that, for example, Microsoft and others
 4 were parties to the Unlawful Agreements.

5 9. The intended and actual effect of these Unlawful Agreements was to fix and
 6 suppress employee compensation, impose unlawful restrictions on employee mobility, deprive
 7 employees of competitive wages, and hinder employees' abilities to advance their careers at
 8 other companies. Defendant's conspiracy and agreements restrained trade and are *per se*
 9 unlawful under federal and California law. Plaintiffs seek injunctive relief and damages for
 10 violations of: Section 1 of the Sherman Act, 15 U.S.C. § 1; the Cartwright Act, Cal. Bus. &
 11 Prof. Code §§ 16720, *et seq.*; and California Business and Professions Code sections 16600 and
 12 17200, *et seq.*

13 10. Plaintiffs petition this Court to allow them to represent and prosecute claims
 14 against Defendant in this class action proceeding on behalf of all those similarly situated. This
 15 class action is brought under Rule 23 of the Federal Rules of Civil Procedure.

16 11. Plaintiffs, on their own behalf and on behalf of the class defined herein, seek to
 17 recover, among other things, the difference between the wages and salaries that class members
 18 were paid and what class members would have been paid in a competitive market, and to enjoin
 19 Defendant from continuing its Unlawful Agreements.

20 **JURISDICTION**

21 12. The Unlawful Agreements out of which the claims of the Plaintiffs and the
 22 Plaintiff Class arise were discussed, negotiated, agreed upon, performed, and enforced by
 23 Microsoft and others in California - particularly in Silicon Valley. This Court has subject
 24 matter jurisdiction over this action under 15 U.S.C. §§ 4 and 16 and 28 U.S.C. §§ 1331 and
 25 1337.

26 13. This Court has personal jurisdiction over Defendant because Defendant
 27 employed individuals in the state of California during the class period, and has had substantial
 28 contacts within the state of California in furtherance of the injuries and conspiracy described

1 herein.

2 14. Venue is proper in this judicial district under 15 U.S.C. § 22 and 28 U.S.C. §
3 1391(b)(1)-(2) because a substantial part of the unlawful acts or omissions giving rise to the
4 claims set forth herein occurred in this judicial district, a substantial portion of the affected
5 interstate trade and commerce was carried out in this district, and Defendant resides in this
6 district.

7 **INTRADISTRICT ASSIGNMENT**

8 15. Under Civil Local Rule 3-2(c) and (e), assignment of this case to the San Jose
9 Division of the United States District Court for the Northern District of California is proper
10 because a substantial part of the events and omissions which give rise to Plaintiffs' antitrust
11 claims occurred within the this division.

12 **PARTIES**

13 16. Plaintiff Ryan, an individual, is a former employee of Microsoft. Ms. Ryan
14 worked for Microsoft from approximately April of 2007 to September of 2012 as a Senior
15 Product Manager of the Xbox LIVE Go-to-Market and a Senior Product Manager for
16 Defendant's web based search "Bing" in Redmond, Washington.

17 17. Ms. Ryan is a resident of the State of California. Ms. Ryan was injured in her
18 business or property by reason of the violations alleged herein.

19 18. Plaintiff Rau an individual, is a former employee of Microsoft. Mr. Rau worked
20 for Microsoft from approximately June 2006 to June 2010 as a Lead Systems Engineer Senior in
21 Seattle, Washington.

22 19. Mr. Rau is a resident of the State of Washington. Mr. Rau was injured in his
23 business or property by reason of the violations alleged herein.

24 20. Defendant Microsoft Corporation Is a Washington corporation with its principal
25 place of business located at One Microsoft Way, Redmond, Washington 98052.

26 **FACTUAL BACKGROUND**

27 **A. Microsoft – the Company**

1 21. Microsoft is an American multinational corporation that develops, manufactures,
2 licenses, supports and sells computer software, consumer electronics and personal computers
3 and services, and is best known for its software products such as the Microsoft Windows line of
4 operating systems, Microsoft Office, Internet Explorer web browser, Bing, its Xbox game
5 console and the Microsoft Surface series of tablets.

6 22. Microsoft was founded by Bill Gates and Paul Allen on April 4, 1975. It rose to
7 dominate the personal computer operating system market with MS-DOS in the mid-1980s,
8 followed by Microsoft Windows. Since the 1990s, it has increasingly diversified from the
9 operating system market and has made a number of corporate acquisitions. In May 2011,
10 Microsoft acquired Skype Technologies for \$8.5 billion in its largest acquisition to date.

11 23. As of 2013, Microsoft is market dominant in both the IBM PC-compatible
12 operating system and office software suite markets (the latter with Microsoft Office). The
13 company also produces a wide range of other software for desktops and servers, and is active in
14 its web based search product named Bing, the video game industry, the digital services market
15 (through MSN), and mobile phones. In June 2012, Microsoft entered the personal computer
16 production market for the first time, with the launch of the Microsoft Surface, a line of tablet
17 computers.

18
19 **B. Microsoft's Managers and Above**

20 24. Technology industry managers, such as Plaintiff Ryan, were highly sought after
21 and come at a premium because their experience and knowledge base places them in a finite
22 pool of candidates qualified for the challenges and needs specific to managing high technology,
23 sales, or administrative employee groups in the high technology industry. Likewise, qualified
24 employees above the management level are even more valuable to employers such as
25 Microsoft. Managers and above at these companies, such as Microsoft, are responsible for
26 supervising and managing a number of employees, employee groups, or divisions. Plaintiff
27 served as a senior product manager for two of Microsoft's newest innovations – their web based
28 search program named "Bing," as well as its gaming console Xbox.

1 25. The Anti-Solicitation Agreements and Restricted Hiring Agreements suppressed
 2 the wages of Plaintiff Ryan and the Plaintiff Class because it prevented any other companies
 3 actively recruit or pursue Plaintiff or the Plaintiff Class thereby letting their salaries and
 4 benefits stagnate while the owners and shareholders reaped higher and higher monetary gains.

5
 6 **C. Microsoft's Technology Industry Professionals**

7 26. Technology personnel such as engineers are in high demand among computer
 8 and high technology companies such as Microsoft because they have knowledge and skill base
 9 that are essential to the profitable operation of most high technology companies. Such
 10 employees are often responsible for improving operations, developing or contributing to the
 11 development of new and/or improved systems, products and services that increase high
 12 technology companies' efficiency, productivity, and profitability. Plaintiff Rau served as a
 13 Lead Systems Engineer at Microsoft, where, among other things, he contributed to the re-
 14 architecture of a central service that increased revenue of a dependent product from \$300
 15 million to \$500 million, due to an increase in capacity.

16 27. The Anti-Solicitation Agreements suppressed the wages of Plaintiff Rau and the
 17 Plaintiff Class because it prevented any other companies actively recruit (i.e., cold call) Plaintiff
 18 or the Plaintiff Class thereby letting their salaries and benefits stagnate while the owners and
 19 shareholders reaped higher and higher monetary gains.

20
 21 **D. The Anti-Solicitation Agreement (i.e. "Do Not Cold Call" List)**

22 28. Microsoft was one of several parties to an Anti-Solicitation Agreement
 23 otherwise known as the "Do Not Cold Call" list. Around May 2007, Microsoft agreed to be a
 24 party to the Anti-Solicitation Agreement, or "Do Not Cold Call Agreement." The Anti-
 25 Solicitation Agreement provided that Microsoft, and each of the other parties to the Anti-
 26 Solicitation Agreement agreed in pertinent part as follows:

27 "Not to directly cold call into those companies [or their respective subsidiaries]."

28 29. These sorts of Anti-Solicitation Agreements have a negative effect on the true

1 value of labor. In a lawfully competitive labor market, each of the parties to the Anti-
2 Solicitation Agreements would have competed for employees through use of a recruiting
3 method called “cold calling,” whereby companies solicit current employees of one or more
4 other companies. Cold calling includes communicating directly—including orally, in writing,
5 telephonically, or electronically—with another employer’s employee who is not expecting the
6 contact, has not specifically asked to be contacted, or who otherwise has not applied for a job
7 opening.

8 30. Cold calling serves as an essential and effective recruiting method, particularly
9 because current employees of other companies are often the most highly qualified individuals
10 but are often unresponsive to other recruiting strategies, but that can be lured by promises of
11 higher salaries, bonuses, or better benefits.

12 31. By using cold calling to solicit current employees from rival companies,
13 companies benefit by taking advantage of rivals’ efforts expended in soliciting, interviewing,
14 and training skilled employees, while simultaneously inflicting a cost on rival companies by
15 removing employees on an employee whom the rival may depend.

16 32. For these reasons, cold calling serves as a critical competitive tool companies
17 use to recruit skilled employees, particularly in the high technology industry where companies
18 benefit from obtaining employees with advanced skills and abilities. By placing restrictions on
19 cold calling, important information regarding certain positions from certain companies is
20 precluded. For instance, information regarding employee salaries at competing companies are
21 for the most part unknown, decreasing the pressure of an employee’s current employer to match
22 a rival’s offer and vice versa. Restrictions on cold calling also limit an employee’s leverage
23 when negotiating his or her salary with his or her current employer. As a result, the effects of
24 cold calling impact all salaried employees of participating companies, regardless of whether or
25 not an employee would have received cold calls but for the agreements.

26 33. Agreements not to cold one another’s employees benefits companies in two
27 major ways. One, it alleviates pressure to retain good employees by paying higher salaries.
28 Two, it suppresses wages because other rivals are not actively soliciting employees through

promises of higher salaries and benefits.

34. Microsoft's conspiracy and consent to the Anti-Solicitation Agreement suppressed Plaintiffs' and the Plaintiff Class' compensation, while simultaneously restricting competition in the labor market in which Plaintiffs and the Plaintiff Class sold their services.

35. The Anti-Solicitation Agreement covered most all employees and was not limited by geography, job function, product group, or time period. Microsoft employees were not informed and did not consent to this agreement.

E. The "Restricted Hiring" Agreement

36. Additionally, around May 2007, Microsoft, along with several other technology companies, entered into a Restrictive Hiring Agreement, agreeing not to place restrictions on hiring each other's employees by refraining from pursuing each other's employees at any management level or above, even if the employee had unilaterally applied for employment to any of these participating "Restricted Hiring" companies. Under the Restricted Hiring Agreement, Microsoft and the other parties to that agreement agreed, in pertinent part, as follows:

"Not to pursue manager level and above candidates for Product, Sales, or G&A roles – even if they have applied to [any of the other parties to the Anti-Solicitation Agreement.]"

37. The Restricted Hiring Agreement entered into by Microsoft eliminated skilled labor for companies with the intent and effect of suppressing the compensation and mobility of their employees. Senior executives of Microsoft expressly agreed, through direct communications, to restrict their recruitment and employment of each other's employees. Senior executives from Microsoft actively concealed their unlawful Restricted Hiring Agreements and its participation in the conspiracy. Other than the most senior executives, managerial employees and above at these companies were not aware of, and did not agree to, these restrictions.

F. Department of Justice Investigation

38. In approximately 2009, the Antitrust Division of the United States Department

of Justice (the “DOJ”) investigated several companies, including Google, and their mutual conspiracy to not solicit one another’s employees. The DOJ examined Google’s Anti-Solicitation Agreements in question and found that the agreements were “facially anticompetitive” and violated the Sherman Act *per se*. According to the DOJ, the Anti-Solicitation Agreements “eliminated significant forms of competition” and substantially diminished competition to the detriment of the affected employees who were likely deprived of competitively important information and access to better job opportunities.” The DOJ concluded that the Anti-Solicitation Agreements “disrupted the normal price-setting mechanisms that apply in the labor setting.”

39. At the time of the DOJ’s investigation and findings, the only defendant disclosed as being a part of the Anti-Solicitation Agreements was Google. After the DOJ’s findings, Google signed a settlement enjoining it from making such non-solicitation agreements again. Thereafter, on or about May 17, 2013, the identity of all (or almost all) of the companies who were parties to the Anti-Solicitation Agreements became publicly available; thus, in May 2013, for the first time ever, the public and Plaintiffs were able to learn that Microsoft was a party to the Anti-Solicitation and the Restricted Hiring Agreements.

G. Effects of the Unlawful Agreements.

40. The Anti-Solicitation and Restricted Hiring Agreements unreasonably restrained trade in violation of the Sherman Act, 15 U.S.C. § 1, and the Cartwright Act, Cal. Bus. & Prof. Code §§ 16720 *et seq.*, and constituted unfair competition and unfair practices in violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* and 16600. These agreements resulted in Microsoft artificially decreasing competition amongst itself and the other parties to the Unlawful Agreements for skilled labor, thus, stifling and suppressing the growth of their respective employees’ wages, so that the companies would be more profitable while allowing the owners and shareholders to reap the benefits of suppressing the employees’ wages.

41. In a lawfully competitive labor market, the Defendant and each of its co-participants in the Unlawful Agreements would have competed against each other for employees and would have

1 cold-called employees and hired employees according to the needs of their business and the going
2 market rates for employee wages. And, in such a lawfully competitive labor market, the
3 participants in the Unlawful Agreements would have engaged in such employee hiring in direct
4 competition with one another, resulting in employees accepting offers from the company who
5 makes the most favorable offer of employment. This competitive process helps to ensure that
6 companies benefit by taking advantage of rivals' efforts expended soliciting, interviewing, and
7 training skilled employees. It also benefits the public through fostering flow of new non-
8 proprietary information and technologies across competing industry leaders. And, this
9 competitive process benefits our country's work force by compensating employees for the fair
10 market value of their skills knowledge, and experience.

11 42. For these reasons, competitive hiring serves as a critical competitive role, particularly in
12 the high technology industry where companies benefit from obtaining employees with advanced
13 skills and abilities. By restricting hiring, employee salaries at competing companies is restricted
14 and depressed, decreasing the pressure of an employee's current employer to match a rival's offer
15 and vice versa. Restrictions on hiring also limit an employee's leverage when negotiating his or
16 her salary with his or her current employer. Furthermore, when companies restrict hiring of rival
17 companies' top tiers employees (e.g., management level and above) the wages of those top tier
18 employees, as well as all other employees underneath them are suppressed because companies are
19 highly unlikely to offer higher salaries to subordinates than they are to managers and executives.
20 As a result, the effects of hiring restrictions impact all employees of participating companies,
21 regardless of whether or not an employee was within the class of employees expressly covered by
22 the Unlawful Agreements.

23 43. Microsoft entered into, implemented, and policed the Unlawful Agreements with
24 the knowledge of overall conspiracy and with the intent and effect of fixing employee
25 compensation of the participating companies at artificially low levels. As additional companies
26 joined the conspiracy and Unlawful Agreements, competition among participating companies for
27 skilled labor continued to drop, and compensation and mobility of the employees of participating
28 companies was further suppressed. These anticompetitive effects were the purpose of the

Unlawful Agreements, and Microsoft, along with the other parties to the agreements, succeeded in lowering the compensation and mobility of their employees below what would have prevailed in a lawful and properly functioning labor market.

44. Plaintiffs and each member of the Class (defined below) was harmed by each and every agreement herein alleged. The elimination of competition and suppression of compensation and mobility had a negative cumulative effect on all Class members. For example, an individual who was an employee of Microsoft received lower compensation and faced unlawful obstacles to mobility as a result of the illicit Anti-Solicitation Agreements Microsoft had with Google and others.

INTERSTATE COMMERCE

45. Microsoft's conduct substantially affected interstate commerce throughout the United States and caused antitrust injury throughout the United States because, among other things, Microsoft had employees across state lines as well as did business over state lines.

CLASS ALLEGATIONS

46. Plaintiffs sue on their own behalf and, under Federal Rule of Civil Procedure 23 on behalf of the following Classes:

All persons who worked at any time from May 10, 2007 to the present for MICROSOFT in the United States. ("Do Not Cold Call Class").

All persons who worked at any time from May 10, 2007 to the present for MICROSOFT in the United States in any manager level or above positions, for Product, Sales, or General and Administrative roles, excluding engineers. ("Restrictive Hiring Class").

47. Collectively, the Do Not Cold Call Class and the Restricted Hiring Class are hereinafter referred to as the "Plaintiff Class" or the "Plaintiff Classes." Plaintiff Ryan sues on behalf of herself and the entire Plaintiff Class, while Plaintiff Rau sues on behalf of himself and only the Do Not Cold Call Class.

48. The Plaintiff Classes contain thousands of members, as each defendant employed thousands of class members each year. Plaintiff Classes are each so numerous that individual joinder of all members is impracticable.

1 49. The Plaintiff Classes are ascertainable either from Microsoft's respective employee
2 and payroll records.

3 50. Plaintiffs' claims are typical of the claims of other class members comprising
4 Plaintiff Classes as they arise out of the same course of conduct and the same legal theories and
5 challenges Microsoft's conduct with respect to each of the Plaintiff Classes as a whole.

6 51. Plaintiffs have retained able and experienced class action litigators as their counsel.
7 Plaintiffs have no conflicts with other class members and will fairly and adequately protect the
8 interests of Plaintiff Classes.

9 52. This case raises common questions of law and fact that are capable of class-
10 wide resolution, including:

- 11 a. whether Microsoft agreed not to actively solicit each other's employees, to notify
12 each other of offers made to their employees, and to limit counteroffers;
- 13 b. whether Microsoft agreed not to pursue other companies managerial-level and
14 above employees;
- 15 c. whether Microsoft's Anti-Solicitation Agreement was a *per se* violation of the
16 Sherman Act;
- 17 d. whether Microsoft's Anti-Solicitation Agreement was a *per se* violation of the
18 Cartwright Act;
- 19 e. whether Microsoft's Restrictive Hiring Agreement was a *per se* violation of the
20 Sherman Act;
- 21 f. Whether Microsoft's Restrictive Hiring Agreement was a *per se* violation of the
22 Cartwright Act;
- 23 g. Whether Microsoft's Anti-Solicitation Agreement is void as a matter of law under
24 California Business and Professions Code section 16600;
- 25 h. Whether Microsoft's Restrictive Hiring Agreement is void as a matter of law under
26 California Business and Professions Code section 16600
- 27 i. Whether Microsoft's Anti-Solicitation Agreement constituted unlawful or unfair
28 business acts or practices in violation of California Business and Professions Code
section 17220;
- j. Whether Microsoft's Restricted Hiring Agreement constituted unlawful or unfair
business acts or practices in violation of California Business and Professions Code
section 17220;
- k. Whether Microsoft fraudulently concealed its conduct;
- l. Whether Microsoft's conspiracies and associated agreements restrained trade,

1 commerce, or competition;

- 2 m. Whether Plaintiffs and the other members of Plaintiff Classes suffered injury as a
3 result of Microsoft's conspiracies and agreements;
- 4 n. Whether any such injury constitutes antitrust injury; and
- 5 o. The measure of damages incurred by Plaintiffs and Plaintiff Classes, including the
6 difference between the total compensation Plaintiffs and the Plaintiff Class
7 received from Defendant, and the total compensation Plaintiffs and the Plaintiff
8 Class would have received from Defendant in the absence of the illegal acts,
9 contracts, combinations, and conspiracy alleged herein.

10 53. These and other common questions predominate over any questions affecting only
11 individual class members.

12 54. This class action is superior to any other form of resolving this litigation. Separate
13 actions by individual class members would be enormously inefficient and would create a risk of
14 inconsistent or varying judgments, which could establish incompatible standards of conduct for
15 Microsoft and substantially impede or impair the ability of class members to pursue their claims.
16 There will be no material difficulty in the management of this action as a class action.

17 **STATUTE OF LIMITATIONS**

18 **A. Continuing Violation**

19 55. Microsoft's conspiracy was a continuing violation through which Microsoft
20 repeatedly invaded Plaintiffs' and Plaintiff Classes' interests by adhering to, enforcing, and
21 reaffirming the anticompetitive agreements described herein.

22 56. Microsoft communicated by phone and e-mail and through in-person meetings to
23 further the conspiracy and the secrecy of the conspiracy as described in this Complaint.

24 **B. Fraudulent Concealment**

25 57. Before May 17, 2013, at the earliest, Plaintiffs did not have actual or constructive
26 notice, and were not on inquiry notice of certain facts when they discovered they have certain
27 claims and can seek certain relief. The Unlawful Agreements between Microsoft and Google
28 were first publicly disclosed in a filing in the Federal Court in the Northern District of California
on May 17, 2013. Thus, the identity of Microsoft's involvement in the conspiracy remained
unknown and unknowable to Plaintiffs until that time.

58. Microsoft took active measures to keep the Unlawful Agreements secret, including,

without limitation, ensuring that any written memorialization of the Unlawful Agreements was not widely disseminated or disclosed to any employees other than a limited group of Microsoft's senior officers.

59. Microsoft also provided pretextual, incomplete, or materially false and misleading explanations for hiring, recruiting, and compensation decisions made under the conspiracy. Microsoft's explanations for its conduct served only to further and conceal its conspiracy.

60. Microsoft has attempted to create the false impression that their decisions are independent and that it was acting in compliance with the antitrust laws.

61. As a result of Microsoft's fraudulent concealment of their conspiracy, the running of any statute of limitations has been tolled with respect to the claims that Plaintiffs and Plaintiff Class have as a result of the anticompetitive and unlawful conduct alleged herein.

COUNT I
(Violation of the Sherman Act, 15 U.S.C. § 1)

62. Plaintiffs incorporate by reference all the allegations in the above paragraphs as if fully set forth herein.

63. 15 U.S.C. section 1 provides, in part, that every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Microsoft engaged in continuing trusts in restraint of trade and commerce in violation of Section 1 of the Sherman Act since at least May 2007.

64. Microsoft, by and through its officers, directors, employees, agents, or other representatives, has entered into an unlawful agreement, combination, and conspiracy in restraint of trade in violation of 15 U.S.C. § 1. The parties to these Unlawful Agreements conspired and agreed to restrict competition for services provided by Plaintiffs and members of the Plaintiff Classes through the Unlawful Agreements and agreements to fix the wage and salary ranges for said class members, all with the purpose and effect of suppressing class members' compensation and restraining competition in the market for services of class members.

65. The parties to the Unlawful Agreements conduct injured and damaged members of the Plaintiff Classes by suppressing compensation to levels lower than the members otherwise

1 would have received in the absence of the parties' involvement to Unlawful Agreements, all in an
2 amount to be proven at trial.

3 66. Microsoft's Unlawful Agreements are *per se* violations of the Sherman Act.

4 67. The acts done by each party to the labor suppression conspiracy, as part of, and in
5 furtherance of, their contracts, combinations or conspiracies were authorized, ordered, or done by
6 their respective officers, directors, agents, employees, or representatives while actively engaged in
7 the management of each Microsoft's affairs.

8 68. As a result of the above violations, Plaintiffs and Plaintiff Classes have been
9 damaged in an amount according to proof. Accordingly, Plaintiffs and Plaintiff Classes seek three
10 times their damages caused by Microsoft's violations of the Sherman Act, the costs of bringing
11 suit, reasonable attorneys' fees, and a permanent injunction enjoining Microsoft from ever again
12 entering into similar agreements in violation of the Sherman Act.

13 **COUNT II**

14 **(Violation of the Cartwright Act, *Cal. Bus. & Prof. Code* §§ 16720, *et seq.*)**

15 69. Plaintiffs incorporate by reference all the allegations in the above paragraphs as if
16 fully set forth herein.

17 70. Except as expressly provided in California Business and Professions Code sections
18 16720 *et seq.*, every trust is unlawful, against public policy, and void. A trust is a combination of
19 capital, skill, or acts by two or more persons for any of the following purposes:

20 (a) To create or carry out restrictions in trade or commerce.

21 (b) To limit or reduce the production, or increase the price of merchandise or of any
22 commodity.

23 (c) To prevent competition in manufacturing, making, transportation, sale or purchase of
24 merchandise, produce or any commodity.

25 (d) To fix at any standard or figure, whereby its price to the public or consumer shall be
26 in any manner controlled or established, any article or commodity of merchandise, produce or
27 commerce intended for sale, barter, use or consumption in this State.

28 71. Microsoft engaged in continuing trusts in restraint of trade and commerce in

1 violation of the Cartwright Act since at least May 2007. Microsoft, by and through its officers,
 2 directors, employees, agents or other representatives, entered into an unlawful agreement,
 3 combination, and conspiracy in restraint of trade, in violation of California Business and
 4 Professions Code section 16720.

5 72. Parties to the Unlawful Agreements conspired and engaged in an unlawful trust in
 6 restraint of trade and commerce by, among other things, restricting and limiting, to a substantial
 7 degree, competition for skilled labor and fixing the wages and salary ranges for said class
 8 members, all with the purpose and effect of suppressing class members' compensation and
 9 restraining competition in the market for services of class members. Microsoft involved itself
 10 with this conspiracy in May 2007.

11 73. As a direct and proximate result of Microsoft and the co-conspirators conduct,
 12 members of the Plaintiff Classes were also injured by incurring suppressed compensation to levels
 13 lower than the members otherwise would have incurred in the absence of Microsoft's unlawful
 14 trusts, all in an amount to be proven at trial.

15 74. Defendant, Plaintiffs, and other class members are "persons" within the meaning
 16 of the Cartwright Act as defined in California Business and Professions Code section 16702.

17 75. The Unlawful Agreements that Microsoft are *per se* violations of the Cartwright
 18 Act, and its conduct violates the Cartwright Act.

19 76. As a result of the above violations, Plaintiffs and Plaintiff Classes have been
 20 damaged in an amount according to proof and seek three times their damages caused by
 21 Microsoft's violations of the Cartwright, the costs of bringing suit, reasonable attorneys' fees, and
 22 a permanent injunction enjoining Microsoft from ever again entering into similar agreements in
 23 violation of the Cartwright Act.

24 **COUNT III**

25 **(Unfair Competition, Cal. Bus. & Prof. Code §§ 17200 et seq.)**

26 77. Plaintiffs incorporate by reference all the allegations in the above paragraphs as if
 27 fully set forth herein.

28 78. Under California Business and Professions Code sections 17200, *et seq.*, any

1 person who engages, has engaged, or proposes to engage in unfair competition—which includes
2 any fraudulent or unlawful business act or practice—may be enjoined in any court of competent
3 jurisdiction, may be held liable for restoring to any person in interest any money or property, real
4 or personal, which may have been acquired by means of such unfair competition, and may be
5 held liable for civil penalties.

6 79. Defendant is a “person” under the meaning of sections 17200, *et seq.* Defendant
7 and the other participants in the Unlawful Agreements engaged in an illegal Anti-Solicitation
8 Agreement and an illegal Restrictive Hiring Agreement to suppress wages of their respective
9 workforce by restricting the ability of their respective employees from attaining employment
10 with the other participants in the Unlawful Agreements – participants who would otherwise be
11 lawfully competing for the same group/type of employees. As of 2007, Microsoft engaged in the
12 entered into the Unlawful Agreements and engaged in the same unlawful conduct.

13 80. Defendant’s acts were unfair, unlawful, and or unconscionable, both in their own
14 right and because they violated the Sherman Act and the Cartwright Act as well as California’s
15 public policy in favor of competition and employee mobility.

16 81. Defendant’s conduct, by engaging in combinations with others with the intent,
17 purpose, and effect of: (1) creating and carrying out restrictions on trade and commerce; (2)
18 eliminating competition for skilled labor; and (3) fixing compensation of employees at artificially
19 low levels, constituted and was intended to constitute unfair and unlawful competition, unfair, and
20 fraudulent business acts and practices within the meaning of California Business and professions
21 Code section 17200.

22 82. Defendant’s conduct injured Plaintiffs and other members of the Plaintiff Classes
23 by suppressing the value of employees’ services and thus suppressing their wages. Plaintiffs and
24 other class members are therefore persons who have suffered injury in fact and lost money or
25 property as a result of the unfair competition under California Business and Professions Code
26 section 17204.

27 83. Under California Business and Professions Code section 17203, disgorgement of
28 Defendant’s unlawful gains is necessary to prevent the use or employment of Defendant’s unfair

1 practices and restitution to Plaintiffs and other class members is necessary to restore to them the
2 money or property unfairly withheld from them.

3 84. As a result of the above unlawful acts, Plaintiffs and Plaintiff Classes have been
4 damaged in an amount according to proof.

5 **COUNT IV**

6 **(Violation of Cal. Bus. & Prof. Code §§ 16600 et seq.)**

7 85. Plaintiffs incorporate by reference all the allegations in the above paragraphs as if
8 fully set forth herein.

9 86. Under California business and professions code section 16600, *et seq.*, except as
10 expressly provided for by section 16600, et seq., every contract by which anyone is restrained
11 from engaging in a lawful profession, trade, or business of any kind is to that extent void. This
12 statute is in furtherance of California's public policy, which favors open competition and
13 employee mobility.

14 87. Defendant entered into, implemented, and enforced express agreements that are
15 unlawful and void under section 16600.

16 88. Defendant's Unlawful Agreements and conspiracy have included concerted action
17 and undertakings among the anti-solicitation participants with the purpose and effect of: (a)
18 reducing open competition among the anti-solicitation participants for skilled labor; (b) reducing
19 employee mobility; (c) reducing or eliminating opportunities for employees to pursue lawful
20 employment of their choice; and (d) limiting employee professional betterment.

21 89. Defendant's Unlawful Agreements and conspiracy are contrary to California's
22 settled legislative policy in favor of open competition and employee mobility, and are therefore
23 void and unlawful.

24 90. Defendant's Unlawful Agreements and conspiracy were not intended to protect and
25 were not limited to protecting any legitimate proprietary interest of Defendant.

26 91. Defendant's Unlawful Agreements and conspiracy do not fall within any statutory
27 exception to Section 16600, *et seq.*

92. The acts done by Defendant as part of, and in furtherance of, its contracts, combinations, or conspiracies were authorized, ordered, or done by their respective officers, directors, agents, employees, or representatives while actively engaged in the management of each Defendant's affairs.

93. Accordingly, Plaintiffs and members of Plaintiff Class seek a judicial declaration that Defendant's Unlawful Agreements and conspiracy are void as a matter of law under Section 16600 and a permanent injunction enjoining Defendant's from ever again entering into similar agreements in violation of Section 16600.

PRAYER FOR RELIEF

Plaintiffs, on behalf of themselves individually and on behalf of Plaintiff Classes pray for relief and judgment against Defendant, as follows:

1. That the Court determine that this action may be maintained as a class action;
2. Appointment of Plaintiffs as Class Representative and their counsel of record as Class Counsel;
3. Pre-judgment and post-judgment interest as provided by law or allowed in equity;
4. An incentive award to compensate Plaintiffs for their efforts in pursuit of this litigation;
5. For nominal damages;
6. For compensatory damages;
7. For injunction against Defendant, prohibiting any further acts in continuance or perpetuation of any unlawful anti-solicitation agreements;
8. For restitution of all monies due to Plaintiffs, and the Plaintiff Classes, and disgorged profits from the unlawful business practices of Defendant;
9. For costs of suit and expenses incurred herein;
10. For reasonable attorneys' fees;
11. For treble damages; and
12. For all such other and further relief the Court may deem just and proper.

JURY DEMAND

Under Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury on all issues so triable.

Dated: October 16, 2014

THE MARKHAM LAW FIRM

s/ Janine R. Menhennet
Attorney for Plaintiffs and on behalf of those
similarly situated